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ABSTRACT

The Fourth Amendment to the United States Constitution guarantees the right of people to be secure against unreasonable searches and seizures. The privacy of individuals, including students, is therefore protected, but only after considering the interests of society. This simulated case study explores what happens when there is an alleged conflict between student rights and society rights or between student rights and school rights. The report provides the circumstances of the case, a case analysis, summary, conclusions, and recommendations. The Nebraska statute concerning student discipline is appended. (Author/JF)

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SIMULATED CASE STUDY:

STUDENT LOCKER, SEARCH AND SEIZURE

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Abstract

The fourth amendment to the United States Constitution states that "the right of people to be secure. . .against unreasonable searches and seizures shall not be violated. . .and no Warrants shall issue, but upon probable cause." The privacy of individuals, including students, is therefore protected, but only after considering the interests of society. What happens when there is an alleged conflict between student rights and society rights? or student rights and school rights? What of in loco parentis? These problems and others are illustrated in our simulated case study of a student locker search and seizure. Our thanks to Professors J. M. Gradwohl (Law) and D. K. Hayes (Educational Administration) of the University of Nebraska--Lincoln for an introduction to the myriad problems, and past and potential solutions.

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SIMULATED CASE STUDY:

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Circumstances

Roughly one month before the end of the school year, Officer Victor of the Lincoln Police Department came to Southwest H. S. and advised Principal Woodman that Harold Young, a 15 year old sophomore student, was being held by the Lincoln Police. Officer Victor asked the principal if he would mind searching Young's locker, which Mr. Woodman was only too glad to do. During the search, Mr. Woodman found a small quantity of a "controlled substance" stuffed into the toe of a tennis shoe belonging to Young. Neither Young nor Young's parents gave permission to search the locker and no search warrant was sought by Officer Victor. There were two keys to the locker, one possessed by Young and never surrendered by him and the other retained by the administration of Southwest H. S. and used by Mr. Woodman to enter the locker. To obtain the locker, Young had signed a card noting his receipt of the key which he promised to return at the end of the semester and also agreeing that the school administration could enter the locker at anytime for any reason without his permission.

Subsequently, Young was charged by juvenile authorities for driving without a valid operator's license. A Deputy County Attorney explained that while Young had been driving a car in which a "controlled substance" was found, there was no direct evidence to rebut Young's claim that he had merely borrowed the car of a friend to run a personal errand and did not know that there was a controlled substance in the trunk.

The Lincoln School District has a validly enacted rule stating:

> Any student who shall sell, use or possess any controlled substance (as defined in the Nebraska Uniform Controlled Substances Act, sections 28-4, 115 to 28-4, 142) shall be expelled from school for the balance of the semester during which such offense occurs. No credit shall be given to the student for any work accomplished in a semester during which he is expelled.

The matter has been widely discussed by the students at Southwest. Principal Woodman believes that Young's presence is detrimental to the best interests of the school in these circumstances. The principal would like to act to keep Young from attending more classes for the rest of the semester. (See Appendix, Nebraska Statute 79-449. Students; expulsion or suspension, grounds; notice; procedure.)

Case Analysis

The fourth amendment provides that "the right of people to be secure . . .against unreasonable searches and seizures shall not be violated . . .and no Warrants shall issue, but upon probable cause." In the case of Harold Young, found to have a controlled substance in his school locker, it is questionable whether expelling him from school would be held valid in a court of law. While a local school board may validly require the expulsion of students possessing a controlled substance, the fourth and fifth amendments bar expulsion of students based on evidence obtained by an unreasonable search or compelled self-incrimination.[1] In this instance, the legality of the warrantless search of the student's locker is the crux of the problem.

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[1]Caldwell v. Cannady, 340 F. Supp. 835 (D. Texas, 1972), 40 U. S. Law Week 2666 (4/11/72).

> A search is not made legal by what it turns up. In law it is good or bad when it starts and does not change character from its success.[2]

The search of the locker must be justified by one of the recognized exceptions to the warrant requirement.[3]

Other significant issues raised are: Did Principal Woodman have the authority to search the student's locker? Was Young's right of privacy invaded? Since the evidence found (as a result of the locker search) was not used against the student in a court of law, could the board of education use the evidence as a basis for disciplinary proceedings?

It is unclear whether the administrator or the police officer had probable cause to search the locker. It is possible that no reason was given to the principal for the search, other than Young was being held at the police station. Thus, the principal would have had no cause to suspect the student of hiding or storing any controlled substance in his locker. The only reason for the "administrative" locker search would have been the assumption that the police officer was acting in good faith and had reason to suspect the student of a crime involving the locker, i.e., the police officer was acting to enforce the law. It would then become apparent that the administrator was acting as an agent of the police and

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[2] Jackson, J., U. S. v. Di Re (1948) 332 U. S. 581, 595, 92 L. Ed. 2d 210, 220, 68 S. Ct. 222.

[3] "Three exceptions to the warrant requirement have been recognized: 1) the search incident to a lawful arrest, in order to assure the safety of police or prevent the destruction of evidence. . . /cases cited/; 2) the search made imperative by the exigencies of the situation, to prevent the threatened removal or destruction of evidence or property, where delay would frustrate this purpose. . . /cases cited/; and 3) the search pursuant to consent." Bridges, T. M., & Smotherman, I. J. Third party consent to search and seizure: A reexamination. Journal of Public Law, 1971, 21 (1), footnote 2, p. 313.

and the search was not for educational purposes, per se. In which case, the administrator's search would not have been justified, would have been rendered illegal, and the evidence found inadmissible,[4] under the exclusionary law.[5]

On the other hand, it is possible that Officer Victor told the principal that Young was at the police station because a controlled substance was found in the car he was driving. While this might give the principal a reason to suspect the student, it is questionable whether the police could use the evidence from the warrantless automobile search as a basis for requesting the locker search. The legality of the automobile search is dubious,[6] as is the reason for stopping the car.[7]

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[4] Piazzola case in Buss, W. G. Legal Aspects of Crime Investigation in the Public Schools, (NOLPE, No. 4); see also Caldwell v. Cannady, Id.

[5] Oaks, D. H. Studying the exclusionary rule in search and seizure. University of Chicago Law Review, 1970, 37, 665-757.

[6] "WASHINGTON--THE U.S. COURT OF APPEALS, IN A 5-TO-4 DECISION, REAFFIRMED . . .an earlier ruling. . .that placed stringent restrictions on the extent to which a policeman may search a person arrested for a traffic violation, ...The most 'intrusive' search constitutionally permissible in routine traffic arrests. . .is a limited frisk for weapons and then only when 'special facts or circumstances' lead the officer to believe that the person stopped 'is armed and presently dangerous.'. . .The decision reaffirmed a 1970 decision in which. . ./the court/ reversed a possession of narcotics conviction of Willie Robinson, 45, who was stopped for a traffic violation in 1968." Crime Control Digest, 6 (44), Nov. 3, 1972, p. 2.

[7] "The common police practice of making routine vehicle 'spot checks' for registration and driver's licenses conflicts with the Fourth Amendment's prohibition against unreasonable searches and seizures, the Pennsylvania Supreme Court holds. Not only are these spot checks 'seizures' within the meaning of the Fourth Amendment, but absent 'specific and articulable facts' supporting a reasonable conclusion that a hazard exists or a law is being broken, they are not justified by any legitimate government interest. (Commonwealth v. Swanger, 1/19/73)." Criminal Law Reporter, 12 (19), Feb. 14, 1973 (sec. 1), p. 1074. It is assumed that Young was stopped for a routine traffic check as he was never charged with a specific violation other than driving without a valid license.

The result of the routine traffic stop revealed the necessity to take the youth into custody because he did not possess a valid operators' license. The officer was then entitled to a limited weapons frisk,[8] but not to a thorough search of the car[9] (which would include the trunk).[10] Thus, if the car was searched at the scene of the routine traffic stop, the controlled substance found in the trunk of the car would be inadmissible as evidence under the exclusionary rule.[11] Any derivative information or evidence (e.g., the controlled substance in the locker) generated or obtained as a result of evidence previously excluded (e.g., the controlled substance in the car trunk) would be inadmissible under the "fruits of the poisonous tree doctrine."[12] However, if the police searched the car (after

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[8] In U. S. v. Robinson (10/31/72) the U. S. Court of Appeals for the D.C. Circuit concluded "that whenever a police officer, acting within the bounds of his authority, makes an in custody arrest, he may also conduct a limited frisk of the suspect's outer clothing in order to remove any weapons the suspect may have in his possession. There are circumstances in which the element of danger may require a full search even as to persons attested for relatively minor traffic type offenses, as where the frisk causes the officer's suspicion to be reasonable aroused as to weapons." text cited in 41 U. S. Law Week 2232, 11/7/72.

[9] "The permissible scope of searches incident to routine traffic arrests . . .must be governed by the teachings set forth in Terry v. Ohio, 392 U.S.1; Sibron v. New York, 392 U.S. 40," quoted in 41 U.S. Law Week 2232 (11/7/72) in the text of U.S. v. Robinson. See also Chimel v. California, 395 U.S. 752.

[10] If during the frisk for weapons or while speaking to the student the officer saw something suspicious "in plain view", there might have been justification for seizure of the evidence or for probable cause to search the rest of the car. That was not the case in this instance.

[11] Mapp v. Ohio, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684; see also Wright, C. A. Must the criminal go free if the constable blunders? Texas Law Review, 1972, 50 (4), April, 736-745.

[12] "A corollary of the exclusion rule is the Fruits-of-the-Poisonous-Tree-Doctrine which extends prohibition against admissibility of derivative evidence obtained directly from the use of the original tainted evidence (which would have to be excluded under the exclusionary rule)." Shenfield, M. H. California Law Review, 1972, May, 60 (3), 875.

they had taken Young to the police station), though not incidental to arrest and lacking in probable cause, for purposes of vouchering the contents (for safekeeping) pursuant to police regulations, the search would have been valid and the evidence in the trunk admissible.[13]

It is also possible that regardless of where the search took place and regardless of the surrounding circumstances, the evidence in the trunk would be admissible because Young, not being the owner of the car, could not justifiably object to a search of someone elses property.[14] In other words, Young's rights were not violated when his friend's car was searched.

Since the search of the car could be shown to be legal, the evidence or actions resulting from the car search would not come under the fruits of the poisonous tree doctrine.[15] On the basis of the evidence found in the

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[13]People v. Kern, 324 N.Y.S 2d. 442 (N.Y. City Crim. Ct., 1971).

[14]"Defendant who was apprehended in a stolen vehicle had no standing to raise constitutional claim based on subsequent warrantless search of automobile by police, since 'the right to object to an unreasonable search and seizure' is a privilege which is personal to those whose rights have been infringed. Dutton V. State, 188 S. E 2d. 799 (Ga. 1972)" in Criminal Law Bulletin, 1972, 8 (8), Oct., p. 711.

If it could be shown that Young had the authority to give third party consent to search the car, then logically it would follow that he had the right to object to a search. If the reverse were true, i.e., he did not have authority to give third party consent, he would not have the right to object to a search. If he could not give third party consent to search the car, for Young to object to the search, he would have to show that the search of the car was directed at him. "'[O]ne against whom the search was directed'" (language used in Jones) should have standing to object in all cases. "Such a person is surely 'the victim of an invasion of privacy' and a 'person aggrieved,' even though it is not his property that was searched or seized." J. Fortas quoting Jones v. U.S. (357 U.S. 493) in Alderman v. U.S. (394 U.S. 165) note in Bridges & Smotherman, Id. at 334.

[15]"[I]n Nordone v. U.S. [308 U.S. 338, 1939], the court noted for the first time that in some cases even evidence that would not have become available 'but for' lawless police conduct might nevertheless be admissable at trial: the connection between the evidence and the illegal act of the police may be so attenuated as to dissipate the taint. This concept of attenuation is analagous to the tort concept of proximate cause; the chain of events linking the unlawful act and the ultimate discovery of the disputed evidence may be so interrupted by independent variables that the original wrong is deemed too remote from the consequences for liability to attach to the wrongful actor." Shenfield, Id. at 873-4.

car, the police may have had mere suspicion that Young was involved with a controlled substance. However, on what basis could a warrantless search of the school locker be justified? In Henry,[16] the Supreme Court found a warrantless FBI search based on mere suspicion, not probable cause, was not justified. Thus, it is doubtful whether a police search of Young's locker would be held constitutional. The police then relayed their information to the school principal and requested him to search the locker.

The school administrator consented to search the locker under the authority of "in loco parentis"[17] and as a government official.[18] Several court cases have recognized that the school administrator's concern for the welfare and well-being of other students and for the maintenance of discipline justifies a warrantless search of a student's locker,[19]

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[16] Henry v. U.S., 361 U.S. 98, cited in Kurland, P. B. (ed.) The Supreme Court and the Constitution. Chicago: Phoenix Books, 1965, 59-61.

[17] "A school official standing in loco parentis to the children entrusted in his care, has, inter alia, the long honored obligation to protect them while in his charge, so far as possible, from harmful and dangerous influences, which certainly encompasses the bringing to school by one of them of narcotics and 'works' whether for sale to other students or for administering such to himself or other students." People v. Jackson, 319 N.Y.S. 2d. 733.

[18] The status of the school administrator as an official of the government or as a private citizen has been debated in the courts. "Some jurisdictions have held that a public school officer is not a government official subject to the restraints of the fourth amendment. . ./cases cited/. _ /O/ther/s/ . . .have accepted the opposite proposition. . ./cases cited/. Generally the actions of a governmental official who is performing his assigned duties should be subject to the restraints of the Bill of Rights and especially to the inhibitions of the Fourth Amendment." In re State in Interest of G. C., 296 A. 2d. 105.

While this distinction of status may be important in some situations, it appears that it is arbitrary in situations concerning student locker searches. In deciding such cases, the overriding principle seems to be the duty of the administrator, acting in any capacity, to protect the welfare of the offender and/or the students adversely affected by his actions.

[19] People v. Overton, 24 N.Y. 2d. 522; In re Donaldson, 269 Cal. App. 2d. 509; Kansas v. Stein, 203 Kan. 638.

jacket,[20] purse,[21] or person[22] conditioned only upon reasonable suspicion. In this instance it might be argued that the principal was acting under "lawful coercion" which was opposed in Bumper.[23] However, Judge Keating observed, "[n]ot only have the school authorities a right to inspect but this right becomes a duty when suspicion arises that something on an illegal nature may be secreted there."[24] It should also be noted that the reliability and veracity of the informant (i.e., Officer Victor) was assumed by the very nature of his position.

It could be argued that the administrator does have the right to protect the students under his care (but not under the "in loco parentis"[25]) which includes protecting their right to privacy, their property, and their right "to be secure and to be let alone."[26] Students do not give up their constitutional rights "at the schoolhouse gate."[27] The overriding function of the Fourth

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[20]State v. Baccino, 282 A. 2d. 869 (Del. Super., 1971).

[21]In re State in the Interest of G. C., 296 A. 2d. 102 (121 N.J. Super. 108).

[22]People v. Jackson, 319 N.Y.S. 2d. 731.

[23]Bumper v. North Carolina,, 88 S. Ct. 1788, 391 U.S. 543, 20 L. Ed. 2d. 797.

[24]People v. Overton, Id.

[25]"Actually the phrase in loco parentis expresses nothing save the school has certain rights and duties to children in its care. When a court rules that a certain act by a school official is performed in loco parentis the court is actually concluding that the act was permissible. When a court rules that an official superseded his powers in loco parentis, the court is ruling that the specific act was not legally permissible. Most simply, the phrase, 'in loco parentis' is no guide to action, but solely a conclusionary label attached to permissible school controls." Knowles, L. W. "Crime investigation in the schools: Its constitutional dimension" in Hazard, W. R. Education and the Law. N.Y.: Free Press, 1971, footnote on p. 215.

[26]Dissent of J. Brandeis in Olmsted v. U.S., 277 U.S. 538, 578 (1928).

[27]Tinker v. Des Moines, 393 U.S. 503, 89 S. Ct. 733.

Amendment is to protect personal privacy and dignity against unwarranted intrusion by the state."[28] While student Young did not have exclusive use of the locker[29] he was justified in expecting privacy.

> The Fourth Amendment protects people not places. What a person knowingly exposes to the public even in his own home or office is not a subject of Fourth Amendment protection . . . /cases cited/. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.[30]

The fact that schools give students individual lockers which no not permit the contents placed in them to be "in plain view," suggests that student perception of locker privacy is fostered and perpetuated by the school officials themselves. In this case, a balancing test would hold that the student had a vested interest in the locker (privacy rights) which was greater than the administration's interest (property rights).[31] Consequently, the student had a justifiable expectation of privacy which the principal was not at liberty to violate.

In defense of the school administration, Ladd's discussion of the legal authority of school officials defines student behavior as being subject to control if it fulfills either of two purposes.

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[28] Mapp v. Ohio, 6 L. Ed. 2d. 1081.

[29] In People v. Overton, Id., "The court. . .said that although a student may have exclusive possession of his locker in regard to other students, he does not have exclusive use in regard to the school authorities." referred to in La Morte, M. W., Gentry, H. W., & Young, D. P. Students' Legal Rights and Responsibilities. (American School Law Series) Cincinnati: Anderson, 1971, 151.

[30] Katz v. U.S., 389 U.S. 351-352, 1967.

[31] "The principal object of the Fourth Amendment. . .is the protection of privacy rather than property and the courts have increasingly discarded fictional and procedural barriers resting on property concepts." People v. Miller, 238 N.E. 2d. 407, 409 cited in Fisher, E. C. Search and Seizure. Traffic Institute, Northwestern Univ., 1970, note 45 on p. 12.

> The first is to fulfill the school's host functions: the protection of the safety, health and welfare of persons, of the school's program and of the school itself. The second is to further the schools' educational functions.[32]

At least two kinds of controls are mandated for assuring proper student deportment with regard to the school's host function: controls needed for law enforcement[33] and controls needed for the protection of persons.[34] Student locker searches are usually considered in the context of fulfilling the school's host function and involve both controls.

The school administration would agree that it does not have the right to violate a student's justifiable expectation of privacy by unreasonable search and seizure. However, in this case, the assignment of the locker was contingent upon the student signing a permit giving authorization to the administration to enter the locker at any time for any reason without his permission.[35] "If one freely and knowlingly consents to a search, he cannot later challenge the fruits of that search as having been obtained

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[32]Ladd, E. T. Allegedly disruptive student behavior and the legal authority of school officials. Journal of Public Law, 1970, 19 (2), 229.

[33]"The requirements of law enforcement are not hard to identify. School officials are bound to take steps to the end that on the premises for which they are responsible the public laws are not violated. Thus, they must prevent or stop assault, theft, destruction of property of others, illegal use of weapons and drugs, genuine slander and libel and the like." Ladd, Id. at 229.

[34]Controls needed for the protection of persons. . .include the prevention of serious injuries and of exposure to contagious diseases and the like. It also includes protecting students. . .from harassment and bullying and protecting their property, their privacy and their right. . .'to be secure and to be let alone'." Ladd, Id. at 230.

[35]"Conceptually this agreement would not be a waiver of a student's right of privacy. . . ./but/ it would change the character of a school locker from a private compartment to one open to the school and its officers." Knowles, Id. at 224.

unlawfully."[36] The school officials retained a key to the locker which indicates that the administration maintained joint control of the locker.[37] Since the student knowingly "assumed the risk of exposure" he could not logically retain an expectation of privacy.[38] Consequently, the principal's search of the locker did not violate Young's fourth amendments rights[39] and the justification for the warrantless search would be "the search pursuant to consent." Subsequently, the evidence found in the locker would be admissible in the principal's attempt to show that the

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[36]In re State in Interest of G. C., Id. at 103, Garber and Seitz noted that the court in Kansas v. Stein "pointed that th Miranda (384 U.S. 436) rule is not applicable to a search and seizure situation and the student need not be given the Miranda warning." The Yearbook of School Law 1971. Danville: Interstate, 1971.

[37]"Actually many schools retain a master key, or combinations, to lockers. This. . .may well be an implicit waiver of exclusive locker control by the students." Knowles, Id. at 224; see also People v. Overton, Id.

Bolmeier aptly noted that one court case involving a search of a student locker "held that what is referred to as a 'student locker' is, in fact, a 'school locker'." Bolmeier, E. C. Legal Limits of Authority over the Pupil. Charlottesville: Michie, 1970, 141.

[38]"In Frazier v. Culp [394 U.S. 731 (1969)], the Supreme court decided that one defendant had no reasonable expectation of privacy in a duffel bag which he shared with his codefendant (he 'assumed the risk' of exposure) and thus the consent of the latter was sufficient to validate a search of the bag which incriminated the former." Bridges & Smotherman, Id. at 331. Frazier v. Culp involved a third party consent. If it was held valid for a joint owner to consent to the search, it would logically follow the joint owner had the right to conduct a "search" himself.

Based on the above, if a school retained joint control of a locker via a second key (which the student knew about), it could be argued that a principal could give third party consent to search the "student's" locker, even if the student had not signed a permission slip, because the student still assumed the risk of exposure and, thus, had no justifiable expectation of privacy.

"Since the fourth amendment protects property rights as well as personal privacy and security, when an incriminated party has no reasonable expectation of privacy in the premises searched or property seized, then someone with an appropriate property interest may consent to the search and thereby make it reasonable under the fourth amendment." Bridges & Smotherman, Id.

[39]"A search to which an individual consents meets fourth amendment requirements." Fisher, Id., note 15 at 107.

student violated a school rule and jeopardized the welfare of the other students.

On the basis of the substance found, the school district's rule about controlled substances, and Nebraska statute 79-449, Principal Woodman could initiate disciplinary proceedings against Young.[40] The decision to expel Young would have to be based on a fair hearing[41] but it is likely that most courts would condone the administrator's actions.[42]

Summary and Conclusions

In the present case, the student violated the rules of the school as well as society; the school administrator did not violate his responsibility

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[40] It is probably that the evidence could be used against the student, even though it was not used in criminal court, because the student would be accused of breaking a school regulation which discussed selling, using, or possessing a controlled substance. Implementation of the rule is not premised on conviction, of any of the foregoing activities, in court.

[41] Without a hearing it is doubtful that the expulsion would be held constitutional because "the courts have seemed to be more responsive to student claims that they have not had fair hearings." Good, W. E. Legal aspects of student control. North Central Association Quarterly, 1968, 43 (2), 250.

Wuester suggests several due process requirements which should be followed to provide a fair hearing: right of notice, right to representation by council, an impartial tribunal and a written transcript of the hearing, and the right of cross-examination of witnesses. Wuester, T. J. School expulsion and due process. In Hazard, Id. at 233.

[42] "Because the explusion of a child from school involves his statutory right to attend school--a very valuable legal right*--the courts examine carefully the reasons for expulsion. Uniformly, however, they recognize that the right of a child to attend school is conditioned upon his submission to appropriate rules of conduct and upon his presence not being detrimental to the health, morals, or educational progress of other pupils." Reutter, E. E., Jr. Schools and the Law. (Legal Almanacs Series, No. 17) Dobbs Ferry: Oceana, 1970.

*Since plaintiff high school student was 16 years of age at the time of his suspension and over the age of compulsory school attendance, his local Board of Education is under no legal obligation to continue to provide education for him. In Supreme Court, 1971; Reid et al. v. Nyquist et al.; 319 N.Y.S. 2d. 53. 65 Misc. 2d. 718." Eastern School Law Review, 1972, 19 (185), March.

to Young, to the other students, the students' parents, or to the educational setting, per se. The administrator searched the student's locker under the authority granted him by the student, the state, and the courts. Thus, the evidence found as a result of the search could probably be used as a basis for disciplinary proceedings against the student, provided the student's right to due process was adhered to.

Generally, in terms of student and school locker searches, the trend seems to be that a school official's behavior is dictated by his obligation to avoid endangering the welfare of the "school" (taken collectively). As a consequence, in some school search situations, where the actions or possessions of one student may operate to adversely affect himself or other students, the offender may find himself stripped of constitutional rights by the school administrator acting, with judicial approval, "in loco parentis."[43] The justification for such action supposedly comes under the fourth amendment's jurisdiction "which protects the privacy of individuals, including students, but only after taking into account the interests of society."[44]

Buss has suggested that

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[43]In a case where a school administrator searched a student's coat (a much more personal belonging than a locker and which justifies an expectation of privacy) the judge ruled: "The privacy rights of public school students must give way to the overriding governmental interest in investigating reasonable suspicions of illegal drug use by such students even though there is an admitted incursion onto constitutionally protected rights--rights that are no less precious because they are possessed by juveniles. I find that the gravity of the evil is sufficiently great, both to the suspected individual and to those who might be victimized by drugs that the suspect makes available." In re State in the Interest of G. C., Id. at 106.

[44]State v. Baccino (282 A. 2d. 869) cited in Eastern School Law Review, 1972, 19 (184), Feb., p. 1.

> /d/isruption, lawlessness, violence, drug abuse--perhaps all too often thoughtlessly associated equated with one another--are perceived by increasing numbers of Americans, including judges, as societal problems affecting schools in a deeply troubling way . . . .Given this view of American public schools, it is not surprising to find the courts reluctant to interpret legal principles in a way that might frustrate attempts to bring these evils under control.[45]

Unfortunately, judicial decisions based on such reasoning may simply reinforce (school) officials to rely more on their own strong preferences than on their legal obligations.[46] When this occurs "They are no more trustworthy than other segments of the population on whose actions courts may have to pass judgment."[47]

Thus, school administrators are urged to take preventative measures in order to insure the preservation of students' constitutional rights and the image of our schools transmitting our cultural heritage and ideals. If either or both of these are lost, our educational system will lose its credibility.

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[45] Buss, Id. at 72-73.

[46] "SAN FRANCISCO--A HIGH NIXON ADMINISTRATIVE OFFICIAL HAS SUGGESTED curtailing the rights of criminal defendants by, among other things, allowing the introduction of illegally seized evidence. Assistant Atty. Gen. Henry Petersen, head of the Justice Department's Criminal Division, also proposed tailoring the rights of defendants to the severity of the crime with which they are charged.

'It should not be necessary to provide the same degree of protection to one who has committed murder and one who has been charged with public intoxication,' Petersen said. As for the use of illegally obtained evidence, 'unlike coerced confessions, probative evidence is reliable, regardless of the manner in which it is seized,' Petersen said.

His remarks were made Sunday at the 95th Annual Meeting of the American Bar Association, which opened its formal program with a prayer breakfast /pax vobiscum/ addressed by Supreme Court Justice Lewis Powell. Powell, a Nixon appointee, deplored what he called 'unanchored individualism' which he said resulted from the current emphasis on 'doing your own thing' and led to 'excessively tolerant views.'" Crime Control Digest, 6 (23), August 18, 1972, p. 6.

[47] Ladd, Id. at 228.

Recommendations

The following recommendations are offered for Young's case and for future cases involving searching students or "their" lockers.

1. The administration should recognize that searching student lockers may lead to very negative perceptions of school administrators (as well as eudcation, per se) on the part of students. Such negative feelings and attitudes are not conducive and may be detrimental to the teaching-learning situation.[48]

2. If the administration does decide to discipline Young as a result of the locker search, the student's right to due process should be honored.

3. The administration could consider several alternatives to expelling Young:

.Young could be brought up on charges of violating a school rule in a student court.[49] Peer group pressure is extremely formidable during adolescence, thus the effects of such actions might be more beneficial and longlasting to the offender and the other students than expulsion.

.Arrangements could be made to have the student work with hospitalized patients who are experiencing the pains of withdrawal.

.As required reading the student could be introduced to case histories of students who: 1) have died as a result of an overdose of drugs; 2) have experienced negative flashbacks as a result of drug use and

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[48] "It is important, if school officials are to be fully effective in teaching our cultural heritage, that their students know them well and like them: coolness between student and teacher is a barrier to education, resentment or hostility is a greater one." Ladd, Id., at 234.

[49] There may be legal implications from such actions. More problems might be created than solved.

experimentation; 3) have been refused jobs and other vocational opportunities because of convictions dealing with controlled substances.

4. The following are preventative measures for the future:

.A statement indicating that the student has no expectation of privacy could be added to the permit students sign prior to receiving lockers.

.Lockers should be made of a transparent material which allows for easy viewing of the contents placed in them.

.Several German Shepherds that are trained to sniff out marijuana could be adopted as school mascots. The students should be told of the dogs' special abilities.

.Each student should receive a copy of the school's rules and regulations.

.Inform students that lockers will be searched on a random basis at various times throughout the year. An intermittent schedule of locker searches should then be conducted.

.Inform the police that they must have a search warrant in any future incidents, except in the case of emergency.

.If a situation arises when the administrator is unsure of his legal authority, whenever possible, he should call the school's attorney before he makes a decision.

.The school attorney should be present at board meetings when policy decisions are to be made.

.Special administrative meetings should be scheduled once a month when the school attorney will be present to discuss the legal authority of school officials. Teachers should have the option of attending.

.Workshops and in-service meetings should be planned which provide information and practical solutions regarding school officials legal authority. These experiences should be for teachers and administrators.

.A professional school law library should be started and available to all school personnel.

APPENDIX

NEBRASKA STATUTE

79-449. Students; expulsion or suspension, grounds; notice; procedure.

The school board or board of education may authorize or order the expulsion or suspension of any pupil from school for gross misdemeanors, immorality, persistent disobedience, or for violation of the regulations, rules, or policies established by the board, or when the presence of the pupil is detrimental to the best interests of the school; and it may confer upon any teacher, principal, or superintendent the power to suspend temporarily a pupil, notice of such suspension being given at once in writing to the president of the board, or to any administrator or teacher designated by the board. When the school board shall expel or suspend a pupil, the parents or legal guardians of the pupil shall be notified in writing of such expulsion or suspension, the reason or reasons for such action, and the right of appeal therefrom. The parents or legal guardian shall have the right to appeal such action to the school board at the first regular meeting of the board following the expulsion or suspension. When a pupil is suspended by the teacher, principal, or superintendent, but when expelled or suspended by the board he may be readmitted only by the board or in the manner prescribed by the board; Provided, that such expulsion or suspension shall not extend beyond the close of the school semester.

The board may exclude from school any incorrigible child or any child who in its judgment is so abnormal that his attendance at school will be of no substantial benefit to him, or any child whose presence in school may be injurious to the health or morals of other pupils or to the welfare of such school.